

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Charles E. Bailey,  
  
Plaintiff,

v.

Case No. 2:13-cv-60

Commissioner of  
Social Security,  
  
Defendant.

ORDER

By previous order of this court, the decision of the Commissioner in this case was reversed, and the matter was remanded for further administrative proceedings. This court also awarded plaintiff attorney's fees under the Equal Access to Justice Act ("EAJA") in the amount of \$7,300.00. On August 29, 2018, counsel for plaintiff filed a motion for an award of attorney's fees pursuant to 42 U.S.C. §406(b). Counsel seeks an award of fees under §406(b) in the amount of \$10,140.00, payable from plaintiff's past due benefits. However, counsel acknowledges that under *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002), this amount must be reduced by the EAJA award of attorney's fees, resulting in a net fee in the amount of \$2,840.00. The Commissioner has not responded to the motion.

On September 20, 2018, the magistrate judge issued a report and recommendation regarding the motion. The magistrate judge noted that following the remand of this case, the Commissioner issued a fully favorable decision awarding benefits to the plaintiff. Counsel was awarded fees by the Social Security Administration for his work before the agency. Counsel has now

submitted an itemized list of his work before this court, and claims fees totaling \$10,124.00, less the amount of the EAJA award. Plaintiff and his counsel agreed to an attorney fee of 25% of the past due benefits, and the claimed fee does not exceed that amount. After considering the appropriate factors, the magistrate judge recommended that the motion be granted, and that plaintiff's counsel be awarded a net attorney's fee of \$2,840.00.

The report and recommendation specifically advised the parties that failure to object to the report and recommendation within fourteen days "will result in a waiver of the right to *de novo* review by the District Judge and waiver of the right to appeal the judgment of the District Court." Doc. 28, p. 4. The time period for filing objections to the report and recommendation has expired, and no party has objected to the report and recommendation.

The court adopts the report and recommendation of the magistrate judge (Doc. 28). The motion for fees (Doc. 27) is granted. Pursuant to 42 U.S.C. §406(b)(1), plaintiff's counsel is hereby awarded a net attorney fee in the amount of \$2,840.00, payable from plaintiff's past due benefits.

Date: October 10, 2018

s/James L. Graham  
James L. Graham  
United States District Judge